IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3593 OF 2004
IN
CRIMINAL APPEAL NO.1007 OF 2004

The State of Maharashtra ..Applicant
Versus
Kakdye @ Vithoba Nakiya Bhosale & Anr...Respondents

Mrs.P.H.Kantharia APP for the State.

Coram : B.H.Marlapalle &
R.S.Mohite,JJ

Date : 22.02.2007.

PC

1. Heard Mrs.Kantharia the learned APP.

2. The State has filed Criminal Appeal No.1007 of 2004 for enhancement of sentence for the conviction under Section 395 of IPC against accused nos.4 & 10 belatedly and therefore, this application for condonation of delay.

3. As per the office note, the appeal is beyond time by 41 days and we are satisfied that the delay deserves to be condoned and hence, the application is allowed in terms of prayer clause-(a).

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The State of Maharashtra ..Appellant
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Mrs.P.H.Kantharia APP for the State.

Coram : B.H.Marlapalle &
R.S.Mohite,JJ

Date : 22.02.2007.

1. Heard Mrs.Kantharia the learned APP.

2. In Sessions Case no.297 of 2001 the learned IVth Ad-hoc Additional Sessions Judge, Pune was pleased to convict accused nos.4 & 10 for the offence punishable under Section 395 of IPC and consequently they have been sentenced to suffer RI for a period of 5 years and to pay fine of Rs.2000/- each, in default, to suffer further RI for 3 months. The State is not satisfied with the sentence and therefore, this appeal.

3. We have considered the injuries suffered by some of the witnesses and at the same time, there was no evidence placed before the trial Court to point out that the convicted accused were also involved in some other criminal case and therefore, the sentence

awarded of 5 years RI, in our considered opinion, does not require re-consideration by this Court.

4. Having regard to the medical evidence the trial Court also noted that the prosecution had claimed that the convicted accused had committed dacoity at several houses during one night alongwith other accused and had failed to establish identity of other accused persons who were allegedly involved with the convicted accused.

5. Hence, the appeal fails at the threshold and the same is hereby dismissed.

(R.S.Mohite,J) **(B.H.Marlapalle,J)**